



# Commonwealth of Massachusetts State Ethics Commission

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**SUFFOLK, ss.**

**COMMISSION ADJUDICATORY  
DOCKET NO. 671**

**IN THE MATTER  
OF  
JAMES J. HARTNETT Jr.**

## **DISPOSITION AGREEMENT**

The State Ethics Commission and James J. Hartnett Jr. enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On August 8, 2001, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A and c. 268B, by Hartnett. The Commission has concluded its inquiry and, on June 25, 2002, found reasonable cause to believe that Hartnett violated G.L. c. 268A, § 23 and G.L. c. 268B, § 7.

The Commission and Hartnett now agree to the following findings of fact and conclusions of law:

### **I. Background Facts**

1. At all times relevant, Hartnett was the Commonwealth's Personnel Administrator and headed the state's Human Resources Division ("HRD"). As such, Hartnett was a state employee within the meaning of G.L. c. 268A.

2. Hartnett's appointing authority for G.L. c. 268A purposes was the Secretary of the Executive Office for Administration and Finance ("A & F"), under whose jurisdiction the HRD falls.

3. The HRD administers a civil service merit system to fill certain positions in state agencies and municipalities. One HRD office, the Office of Employee Relations, is responsible for state employee union issues, such as collective bargaining contract negotiations, benefits and other contract interpretations, and grievances.

4. Hartnett's duties as Personnel Administrator and head of HRD included meeting with union leaders to address union issues. Hartnett also served on several collective bargaining teams and was the chief negotiator for the state when he did so. About 25% to 35% of Hartnett's time as Personnel Administrator was devoted to union issues.

5. The National Association of Government Employees ("NAGE") is a union representing over 100,000 government employees nationwide and about 12,000 state employees; its headquarters are in Quincy, Massachusetts. NAGE is one of the two largest unions with which HRD has official relations. At all times relevant, Kenneth T. Lyons was the NAGE president.

6. As Personnel Administrator, Hartnett had official responsibility for contract extensions and contract negotiations concerning major contracts between NAGE and the Commonwealth. These contracts covered the state's clerical and support, trades and crafts, and professional staff employees.

7. Lyons was not usually involved in day-to-day contract negotiations. Occasionally, however, when the negotiating team needed some help, Lyons would become personally involved or contact Hartnett on behalf of NAGE.

## **II. Chapter 268A Violations**

### *Findings of Fact*

#### *Lunches*

8. When Hartnett first became Personnel Administrator in July 1997, he arranged to meet with the leader of each union representing state employees, to build a relationship with them. When Hartnett told his NAGE contact that he wanted to meet with NAGE's president, he was told that it was Lyons's longstanding custom to conduct NAGE business over lunch at Anthony's Pier 4 restaurant when he was in Boston. Thus, whenever they met in Boston to discuss union business or any matters of interest to NAGE, they did so over lunch at Pier 4.

9. Between January 1998 and July 2001, Hartnett had lunch meetings with Lyons approximately 20 times at Anthony's Pier 4. The average per person cost of these business lunches was \$50, and about ten of the lunches cost more than \$50 per person. Lyons always paid for these lunches through a NAGE account. According to Hartnett, he offered to pay at the earliest of these lunches, but Lyons refused his offer. Thereafter, Hartnett did not repeat his offer.

10. Hartnett knew that Lyons and/or NAGE was paying for these lunches.

11. Hartnett also knew that Lyons's reason for paying for these lunches was not because of any social relationship between Hartnett and Lyons, but because of Hartnett's official position as Personnel Administrator and Lyons's interest in conducting business with the HRD on behalf of NAGE.

12. Section 6 of the A & F Code of Conduct for managers and non-union employees—which policy Hartnett was mandated to follow—provides:

Employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of value, from a person who or entity which the employee knows or has reason to know:

(a) has, or is seeking to obtain, contractual or other business or financial relations with his or her agency/department;

(b) conducts business or other activities which are regulated or monitored by the agency/department, except as permitted by statute or regulation; or

(c) has interests that may be substantially affected by the employee's performance or nonperformance of his or her official duties or has the appearance of being substantially affected.

The Code of Conduct further provides that these restrictions do not apply to:

the acceptance of food or refreshments of nominal value on infrequent occasions in the ordinary course of a breakfast, luncheon, dinner, or other meeting attended for educational, informational or other similar purposes. However, *agency/departmental employees, while on official business, are specifically prohibited from accepting free food or other gratuity, except non-alcoholic beverages (coffee, tea, etc.), from persons with whom they have contact in the performance of their official duties.* Employees are not permitted to accept standing offers of meals or refreshments, nor are they permitted to accept several instances of offers of food or refreshments from the same person or entity which, in the aggregate, would exceed the definition of nominal value during a calendar year [emphasis added].<sup>1/</sup>

13. Hartnett's appointing authority, the Secretary of A & F, was not aware that Hartnett was having lunch periodically with Lyons, or that Lyons and/or NAGE was paying for Hartnett's lunch expenses. Hartnett

made no disclosures regarding these lunches.

### *Holiday Parties*

14. In 1998, 1999 and 2000, Lyons invited Hartnett and his wife to attend Fourth of July parties at Lyons's summer residence in Bourne, which they did. The per person cost for those parties—which included food, drink and entertainment—was \$200.

15. Lyons also invited Hartnett and his wife to attend Christmas parties in those same years, as well as in 1997. Hartnett and his wife attended on three or four occasions. Held at Anthony's Pier 4, these parties included a full dinner, open bar and professional entertainment. The per person cost was over \$50.

16. The apparent purpose of these holiday parties was for Lyons to express appreciation to the people who worked with NAGE. NAGE paid for all the party expenses, and no guest was asked to pay.

17. Before attending the first holiday party in 1997, Hartnett offered to pay for his and wife's costs, and provided a check to cover their expenses. NAGE never cashed the check, and Hartnett did not repeat his offer.

18. Hartnett knew that Lyons and/or NAGE was using these parties to create goodwill for NAGE in its official dealings with HRD. Thus, Hartnett knew or had reason to know that he and his wife were invited to these parties not because of any personal or social relationship that he shared with Lyons, but because of Hartnett's official position as Personnel Administrator.

### *Seiko Watch*

19. Shortly after Hartnett became Personnel Administrator, he met with Lyons for the first time at NAGE's headquarters. At that meeting, Lyons gave Hartnett a Seiko watch with a NAGE emblem on its face.

20. Hartnett believed that Lyons gave him this watch as a gesture of goodwill, and he accepted it because he wanted to generate goodwill for the Commonwealth with NAGE. Thus, Hartnett knew that he received the NAGE watch not because of any personal or social relationship that he shared with Lyons, but because of his official position as Personnel Administrator.

21. NAGE records indicate that the NAGE emblem watches were purchased for \$229 each. The manufacturer's list price for the watch was \$215, and its retail price was between \$100 and \$150. According to Hartnett, he has never worn the watch.

### *Conclusions of Law*

22. Section 23(b)(2) of G.L. c. 268A prohibits a state employee from knowingly, or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

23. Section 23(b)(3) of G.L. c. 268A prohibits a state employee from, knowingly, or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. The section further provides that it shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

24. By receiving free business lunches and a NAGE/Seiko watch from Lyons, and by attending holiday parties sponsored by NAGE under the facts described above, Hartnett knew or had reason to know that he was using his official position as Personnel Administrator to obtain unwarranted privileges. Such conclusion is based on the following factors.<sup>27</sup> First, Hartnett was in charge of the HRD. Second, he accepted lunch at Anthony's Pier 4, food and entertainment at the holiday parties, and the NAGE/Seiko watch from the NAGE president. Third, when Hartnett accepted these items, NAGE had and would continue to have interests in HRD matters

that potentially had a significant impact on NAGE business. Fourth, Hartnett accepted these items in violation of the A & F Code of Conduct. Finally, Hartnett accepted these items knowing that Lyons was giving them to him primarily because of the authority that Hartnett could exercise as Personnel Administrator regarding NAGE.

25. The unwarranted privileges were of substantial value and, under the above-described circumstances, were not properly available to similarly situated individuals.

26. Therefore, based on the above circumstances, Hartnett knew or had reason to know that he was using his official position to secure for himself unwarranted privileges of substantial value not properly available to similarly situated individuals. By doing so, Hartnett violated G.L. c. 268A, § 23(b)(2).

27. In addition, by taking official actions of interest to Lyons and/or NAGE, at or around the same time that he was accepting from Lyons free lunches, holiday party hospitality, and the NAGE/Seiko watch Hartnett knew or had reason to know that he was acting in a manner that would cause a reasonable person knowing all of the facts to conclude that Lyons and/or NAGE could improperly influence him in the performance of his official duties.<sup>3/</sup> Thus, Hartnett violated § 23(b)(3).<sup>4/</sup>

### **III. Chapter 268B Violations**

#### *Findings of Fact and Conclusions of Law*

28. As Personnel Administrator, Hartnett was required to file an annual Statement of Financial Interests (“SFI”) with the Ethics Commission.

29. General Laws c. 268B, § 5(g)(5) requires disclosure of the name and address of the donor, and the fair market value, if determinable, of any gifts aggregating more than one hundred dollars in the calendar year, ... if the recipient is a public employee and the source of such gift(s) is a person having a direct interest in a matter before the governmental body by which the recipient is employed.

30. General Laws c. 268B, § 7 provides a penalty for any person who files a false SFI under G.L. c. 268B, § 5.<sup>5/</sup>

31. Hartnett knew that NAGE had direct interests in matters pending before HRD during the relevant years.

32. In each of his SFIs for the years 1997 through 2000, Hartnett did not disclose his receipt of any gifts under § 5(g).<sup>6/</sup>

33. The items that Hartnett received from NAGE through Lyons were gifts aggregating over \$100 in each calendar year, and Hartnett knew or had reason to know the value of those gifts.

34. Thus, Hartnett failed to disclose on his 1997 through 2000 SFIs his receipt of gifts from Lyons aggregating over \$100 per calendar year, in violation of G.L. c. 268B, § 7.

### **IV. Resolution**

In view of the foregoing violations of G.L. c. 268A by Hartnett, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Hartnett:

(1) that Hartnett pay to the Commission the sum of \$4,000 as a civil penalty for violating G.L. c. 268A, § 23(b)(2) and (b)(3) with regard to his receipt of the lunches at Anthony’s Pier 4, food and entertainment at holiday parties, and the NAGE/Seiko watch; and for his violating G.L. c. 268B, § 7;

(2) that Hartnett amend his 1997 through 2000 SFIs to reflect his receipt of gifts from Lyons/NAGE aggregating over \$100 per calendar year in order to comply with G.L. c. 268B; and

(3) that Hartnett waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE: December 3, 2002**

<sup>1/</sup>The Code defines “nominal value” as \$25 or less.

<sup>2/</sup>The conclusion in this particular case that there was a use of position to obtain an unwarranted privilege is based on the cumulative effect of all the factors cited. No one factor is determinative. The Commission could reach the same conclusion in another case, even in the absence of one or more of these factors. Thus, each situation must be evaluated case-by-case, based on its own particular factors.

<sup>3/</sup>Section 23(b)(3) provides further that the appearance of impropriety can be avoided if the public employee discloses in writing to his appointing authority all of the relevant circumstances which would otherwise create the appearance of conflict. The appointing authority must maintain that written disclosure as a public record. Hartnett made no such disclosure. The law’s provision for advance written disclosure to dispel the appearance of a conflict of interest is not a technical requirement. It causes the public employee to pause and reflect upon the appearance issue and decide whether to abstain or, notwithstanding the appearance issue, to participate after making a timely written disclosure. Importantly, if the public employee chooses to participate, the written notice gives the appointing authority the opportunity to consider the appearance issues raised and to take appropriate action.

<sup>4/</sup>Section 3 of the conflict-of-interest law prohibits a public employee from accepting or receiving anything of substantial value for himself for or because of any official act or act within his official responsibility. Hartnett’s receipt of free lunches from Lyons while discussing official business raises § 3 issues, but the Commission declined to pursue this conduct under § 3 because of the specific circumstances involved.

<sup>5/</sup>Any person who willfully affirms or swears falsely in regard to any material matter before a commission proceeding under paragraph (c) of section four of this chapter, or who files a false statement of financial interests under section five of this chapter shall be punished by a fine of not more than one thousand dollars or by imprisonment in the state prison for not more than three years, or in a house of correction for not more than two and one-half years, or both. G.L. c. 268B, § 7.

<sup>6/</sup>“Gift” means a payment, entertainment, subscription, advance, services or anything of value, unless consideration of equal or greater value is received. G.L. c. 268B § 1(g).